

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION**

JARROD GOODEN,

Plaintiff,

v.

Officer WASHINGTON, Officer
CRAWFORD, DR. EDWARD AIKENS,
And MEDICAL STAFF PROVIDER,

Defendants.

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CASE NO.: 1:11-CV-60 (WLS)

ORDER

Before the Court is a Report and Recommendation from United States Magistrate Judge Thomas Q. Langstaff, filed May 9, 2011. (Doc. 7). It is recommended that two Defendants named in the *pro se* prisoner Plaintiff's Complaint (Doc. 1) – Dr. Edward Aikens and Medical Staff Provider – be dismissed pursuant to the required initial review performed under 28 U.S.C. § 1915A. (Doc. 7 at 2, 4-5). Judge Langstaff recommends that Defendant Aikens be dismissed without prejudice, and Defendant Medical Staff Provider be dismissed with prejudice. (*Id.* at 5). Plaintiff filed a timely Objection pursuant to both Judge Langstaff's Report and Recommendation and 28 U.S.C. § 636(b)(1). (Doc. 12). Said Objection only addresses Judge Langstaff's recommended dismissal without prejudice of Defendant Aikens. (*Id.* at 1-2).

For the following reasons, the objections set forth in Plaintiff's Objection (Doc. 12) are **SUSTAINED**. The Court **ADOPTS-in-part** and **DOES-NOT-ADOPT-in-part** United States Magistrate Judge Langstaff's May 9, 2011 Report and Recommendation ("R&R"). (Doc. 7 at 4-5).

That portion of the R&R recommending dismissal with prejudice of Defendant Medical Staff Provider (Doc. 7 at 5), which is not opposed in Plaintiff's Objection (*see generally* Doc. 12 at 1-2), is **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated therein. Accordingly, it is **ORDERED** that Defendant Medical Staff Provider is **DISMISSED WITH PREJUDICE**.

However, for reasons stated below, the Court **DOES NOT ADOPT** that portion of the R&R recommending dismissal without prejudice of Defendant Dr. Edward Aikens. (Doc. 7 at 4-5). Due to the assertions in Plaintiff's Objection that he erroneously failed to include in his Complaint facts regarding Defendant Aikens (Doc. 12 at 1-2), and in light of the fact that no Answer has yet been filed in this case (*see generally* Docket), Plaintiff is **ORDERED** to file an **AMENDED COMPLAINT** adding his claims against Defendant Dr. Edward Aikens and any other parties – except Defendant Medical Staff Provider – that may have been erroneously omitted from the original Complaint due to Plaintiff's oversight. Plaintiff is **ORDERED** to file said Amended Complaint **within twenty-four (24) days** of the date of entry of this Order, which provides Plaintiff twenty-one (21) days for filing plus three (3) additional days for mailing. Once filed, the Amended Complaint will be subject to Judge Langstaff's review under 28 U.S.C. § 1915A and any Report and Recommendation that may arise therefrom.

I. Defendant Medical Staff Provider

Judge Langstaff recommends that Defendant Medical Staff Provider be dismissed with prejudice. (Doc. 7 at 5). Plaintiff's Objection does not address this recommendation. (*See generally* Doc. 12). Because Plaintiff's Objection is silent regarding Judge Langstaff's recommendation to dismiss Defendant Medical Staff Provider with prejudice, any objection thereto has been **WAIVED** by Plaintiff. Accordingly, Judge Langstaff's recommendation to

dismiss with prejudice Defendant Medical Staff Provider is **ACCEPTED, ADOPTED** and made the Order of this Court for reason of the findings made and reasons stated in Judge Langstaff's May 9, 2011 Report and Recommendation. (Doc. 7 at 5). It is therefore **ORDERED** that Defendant Medical Staff Provider is **DISMISSED WITH PREJUDICE**.

II. Defendant Dr. Edward Aikens

Judge Langstaff recommends that Defendant Dr. Edward Aikens be dismissed without prejudice. (Doc. 7 at 4-5). Plaintiff's Objection states that he erroneously failed to include in his Complaint facts regarding Defendant Aikens, which omitted facts are provided in Plaintiff's Objection. (Doc. 12 at 1-2). For the reasons stated below, Plaintiff's Objection regarding Dr. Aikens is **SUSTAINED**, and the Court **DOES NOT ADOPT** that portion of Judge Langstaff's May 9, 2011 Report and Recommendation recommending dismissal without prejudice of Defendant Dr. Edward Aikens. (Doc. 7 at 4-5).

Because Federal Rule of Civil Procedure 15 permits a party to amend his pleading requiring a responsive pleading "once as a matter of course" within twenty-one (21) days of the response, Fed. R. Civ. P. 15(a)(1), because no response has yet been filed to Plaintiff's Complaint (*see generally* Docket), and because Plaintiff has not yet amended his Complaint (*see generally id.*), the Court finds that Plaintiff is free to amend his Complaint in this instance. Accordingly, Plaintiff is **ORDERED** to file an **AMENDED COMPLAINT** adding his claims against Defendant Dr. Edward Aikens and any other parties – except Defendant Medical Staff Provider – that may have been erroneously omitted from the original Complaint due to Plaintiff's oversight. Plaintiff is **ORDERED** to file said Amended Complaint **within twenty-four (24) days** of the date of entry of this Order, which provides Plaintiff twenty-one (21) days for filing plus three (3) additional days for mailing. Once filed, the Amended Complaint will be subject to

Judge Langstaff's review under 28 U.S.C. § 1915A and any Report and Recommendation that may arise therefrom.

SO ORDERED, this 16th day of June, 2011.

/s/ W. Louis Sands

**THE HONORABLE W. LOUIS SANDS,
UNITED STATES DISTRICT COURT**